

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AT&T CORP,

Plaintiff,

v.

DATAWAY INC,

Defendant.

No. C-07-02440 (EDL)

**ORDER DENYING MOTIONS TO
DISMISS**

AT&T Corporation (“AT&T”) and Dataway, Inc. (“Dataway”) both filed motions to dismiss which came on for hearing on January 15, 2008. Having read all the papers submitted and carefully considered the relevant legal authority, the court hereby DENIES both motions for the reasons stated at the hearing.

AT&T filed a complaint pursuant to 47 U.S.C. § 203 of the Federal Communications Act, 47 U.S.C. 201, et seq. (“Federal Communications Act”). AT&T claims that it billed Dataway for telecommunication calls and related services and claims that payment is due. Dataway moved to dismiss the complaint. For the reasons stated at the hearing, the Court finds that it has jurisdiction, that venue is proper, that service was sufficient, and that the complaint states a claim.

AT&T also moved to dismiss the first, second, third, and fifth claims for relief of the Counterclaim of Dataway for failure to state a claim under Rule 12(b)(6). As stated at the hearing, AT&T did not demonstrate that the federal tariff requirements preempt the state causes of action here, as neither party addressed the ramifications of the detariffed telecommunications marketplace. See, e.g., Ting v. AT&T, 319 F.3d 1126 (9th Cir. 2003). As stated at the hearing, this denial is

without prejudice to reconsidering these issues in future dispositive motions.

IT IS SO ORDERED.

Dated: January 16, 2008

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge